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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,830	09/23/2003	James L. Freeby	2032.2.1	4985
36491	7590	04/07/2004	EXAMINER	
KUNZLER & ASSOCIATES 8 EAST BROADWAY SALT LAKE CITY, UT 84111			KATCHEVES, BASIL S	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,830

Applicant(s)

FREEBY ET AL.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 12-14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,946,569 to Stuber.

Regarding claims 1 and 13, Stuber discloses a barrier (fig. 7: 24) comprised of a bentonite material surrounding a pole (fig. 7: 10).

Regarding claim 2, Stuber discloses a retaining device (fig. 7: 20) for retaining the material.

Regarding claim 3, Stuber discloses a pole (fig. 7: 10).

Regarding claims 4 and 16, Stuber discloses the material as surrounding the pole (fig. 7).

Regarding claims 12 and 14, Stuber discloses a depression (fig. 8: 16) at the boundary of the material.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-10, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,946,569 to Stuber.

Regarding claims 5-7, Stuber discloses the basic claim structure of the instant application but does not disclose specific dimensions between the perimeter and the pole. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claims 8-10, Stuber discloses the basic claim structure of the instant application but does not disclose specific dimensions of the material depth. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claim 17, Stuber does not specifically disclose the bentonite as sloping upwards toward the pole. However, Stuber discloses mixing the bentonite with concrete (column 3, lines 37-42). A centrally sloping slurry, toward the central pole, would be inherent, as gravity acts upon a slurry to provide an upward sloping toward the slurry's center as it is poured.

Regarding claim 19, Stuber does not disclose shoveling the bentonite material into the hole with the pole. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to shovel the bentonite, as bentonite is a concrete like slurry and shoveling is a common means of applying and smoothing concrete type slurries therefore reducing costs.

Claims 11, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,946,569 to Stuber in view of U.S. Patent No. 5,048,605 to Toon et al.

Regarding claims 11 and 15, Stuber discloses the bentonite material in an annular ring around the pole (fig. 7: 12) wrapped by a rubber sheet, not a plastic sheet. Toon discloses a pole surrounded by bentonite (column 1, line 29) having a plastic sheet wrapped around (column 5, lines 62-66). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by using a plastic sheet, as disclosed by Toon, in order to increase the barrier protection while reducing costs.

Regarding claim 20, Stuber discloses bentonite material in an annular ring around a pole (fig. 7: 12) wrapped by a rubber sheet, not a plastic sheet. Toon discloses a pole surrounded by bentonite (column 1, line 29) having a plastic sheet wrapped around (column 5, lines 62-66). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by using a

plastic sheet, as disclosed by Toon, in order to increase the barrier protection while reducing costs. Also, Stuber in view of Toon discloses the basic claim structure of the instant application but does not disclose specific dimensions of the bentonite material. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,946,569 to Stuber in view of U.S. Patent No. 6,399,544 to Fairchild et al.

Regarding claim 18, Stuber does not specifically disclose pumping of the material. Fairchild discloses the pumping of a bentonite material (abstract, line 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by using a pumpable bentonite material, as disclosed by Fairchild, in order to speed installation time.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to bentonite pole protection in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is

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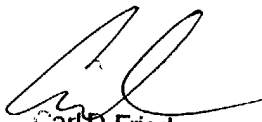
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(703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK ~~PK~~

4/1/04


Carl D. Friedman
Supervisory Patent Examiner
Group 3600